

THE MERITS AND DEMERITS OF THE JURY SYSTEM

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This is a short paper delivered by the writer at a forum on the jury system organised by the Royal University Law Society last year.

THE Jury system is a subject of great controversy. It has been enthusiastically praised and vigorously criticised. Advocates of the jury system proudly refer to it as the democratic institution par excellence by means of which justice is ideally administered. Admirers of trial by jury were full of praise for the system. Lord Camden said 'Trial by jury is indeed the foundation of our free constitution, take that away and the whole fabric will soon moulder into dust. These are the sentiments of my youth — inculcated by precept, improved by experience and warranted by example.' However, the jury system has in recent years come under severe attack and eminent critics consider this system as being out of date. They claim that in many ways present day juries do not serve the true aims of justice.

The pre-eminent merit of the jury lies in its composition. Sec. 597 amended by Act 23 of 1972 states 'Every person of the age of 21 years or upwards residing in Malta or its dependencies being a citizen of Malta shall be qualified to serve as a juror provided such person has an adequate knowledge of the Maltese language, is of good character and is competent to serve as a juror.'

By opening the gates completely, our legislators quite rightly opted for a jury that would be truly representative of the whole community.

It consists of a group of independent members of the community, with no interest in the case under consideration. The jury may be considered the microcosm of the community, reflecting the attitude of society. The jurors are the representatives of the community. The people trust and sympathise with them, and as such their verdicts are more readily accepted by the public.

It is felt that since the judicature is appointed by the executive, the sympathies of the judges are likely to be on the side of the authorities. Thus the layman's conscience is more at ease when confronted with the verdict of the jury than that of a sole judge.

The jury prevents the state from manipulating the strings of jus-

ice to its own ends. This is of paramount importance in cases with political overtones. In such offences as treason, unlawful assembly and sedition the jury serves as a check on the state and police. This safeguard to political oppression was of more importance previously, since judges were held during the king's pleasure. It has lessened in importance nowadays that the impartiality and independence of the judges is an entrenched provision of our Constitution.

The Jury system ensures that power is not centralised entirely around one man. Being fearsome of granting power to one person, society willingly accepts this distribution and check on power by leaving the verdict entirely to the jurors. Indeed wouldn't the verdict as expressed in the isolated opinion of one man be highly undemocratic?

The presence of jurors ensures utmost clarity in the proceedings, thus making certain that the presentation of arguments are easily understandable to the ordinary man. This is in keeping with Lord Hewart's legal maxim that 'justice must not only be done but it should manifestly be seen to be done'. After all it is the lay conscience which must be satisfied.

The jurors are best suited to administer justice, for by being disinterested adjudicators they are highly qualified to reach the impartial verdict society expects from them. The jury system is closely linked with the liberty of the subject, indeed admirers have proudly referred to it in such glowing terms as the 'bulwark of liberty' and 'lamp of freedom'. The reason why it is regarded as a main liberty of the subject is that it guarantees that nobody shall undergo severe punishment until guilt has been proved beyond doubt in the minds of nine ordinary men and women.

The Jury system gets people involved in the administration of justice. It gives a certain amount of power and of popularity to the administration of justice which could hardly be derived from any other source.

However in spite of the above mentioned merits which are by no means an exhaustive list, the jury system has in recent years come under vigorous attack. It has disappeared almost completely from the civil courtroom and is only used in the more serious criminal cases. Indeed some authorities even doubt whether it will be with us in any recognised form by the end of this century.

Critics mainly question the sacrosanct principles of the secrecy

of deliberation and absence of declared reasons for verdicts reached. We possess no information on how and why juries arrive at their verdicts because no one is allowed to listen to the discussions in the jury room. Is therefore our confidence in our present system essentially a matter of faith? Would public confidence in the system be undermined if an impartial investigation of how the system works were carried out? Why do we protect this social institution from rational enquiry? Could investigations reveal that it wasn't doing its job?

The jurors at times encounter great difficulty in comprehending evidence in commercial fraud cases and cases when plea of insanity is raised. In above cases I submit that the jury may at times be a hindrance rather than a benefit to the administration of justice. In cases of commercial fraud the jury (if to be used at all) should consist of a number of accountants chosen from a special panel. To leave the verdict in the hands of ordinary men and women lacking a rudimentary knowledge of accounts could result in a perverse verdict. Where plea of insanity is raised, a jury can even convict in the case of unanimous medical evidence that accused was insane. Can the jury absorb the expert evidence given to them by medical experts? The sacrosanct principle of unreasoned verdicts prevents us from answering this question. However, to allow doctors a final say in determining insanity of accused would be dangerous for by so doing the doctors would be substituting the jurors and would thus become judges of a point of fact themselves.

Prejudices of jurors affecting verdicts could be a common occurrence. Indeed the high number of acquittals in motoring offences has strengthened the English bar council proposals that offences of dangerous and reckless driving should be tried solely in magistrates' courts. In sexual offences feelings of abhorrence on part of jurors could give rise to prejudices against the accused leading to a conviction not justified by the evidence.

Prejudices against the police could lead to doubtful acquittals. Indeed a man may be suspected of dishonesty merely because he is a policeman. At times jurors avenged themselves for a past injury sustained at the hands of the police.

My intention in reviewing a number of merits and demerits of the jury has been simply in the hope that this will stimulate debate, and provoke argument from the members of the audience who I am certain have a lot to add and comment upon.

Ever since the introduction of the jury system by Maitland in 1814 after our ancestors voluntarily petitioned for trial by jury, we Maltese have rightly been proud of the successful way in which his system has functioned. I submit that the jury system has unique advantages which outweigh its inconveniences and thus our way of administering justice in the criminal courts should not be changed without conclusive demonstration that it has ceased to work well. Everybody wants legal procedure to be just and I believe that the existing jury system has done great justice and should only be replaced when a more ideal system of administering justice emerges.

~~PAY AS YOU EARN - AN ADMINISTRATIVE OUTLOOK~~

~~C. A. FENECH~~

~~THE legislation which introduced Pay As You Earn in Malta came into effect in January of 1973 which is the basis year for year of assessment 1974.~~

~~It is not my task to explain the merits and demerits of the system as that is the province of the economist and politician. My chief concern is with laying down in simple terms its administrative aspects from the standpoints of the three parties involved, namely the CIR, the employer and the tax payer.~~

~~PAYE is a system of deduction of tax at the source whereby the employer deducts the appropriate Income Tax from the wages, salaries and other emoluments paid by him to his employees at the time of payment and accounts for the tax so deducted to the Inland Revenue Department. Late in 1972 all employers were asked to submit a list of their employees to include details of their current rate of pay. From these figures, or from the last assessment raised where available, the department computed each individual's estimated tax liability for the year of assessment 1974, expressed the result as a percentage of his annual pay and notified the rate so computed, to the employers.~~

~~As from the end of the first week of January 1973 the employer applied these various rates to his employees' remuneration, deducted the tax, paid out the balance to the employees, and re-~~